

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

ROBERT EARL GREEN, )  
Register No. 189877, )  
                          )  
                          )  
                          Plaintiff, )  
                          )  
                          )  
                          v. )                          No. 04-4316-CV-C-NKL  
                          )  
                          )  
RHONDA QUIGLEY, et al., )  
                          )  
                          )  
                          Defendants. )

**ORDER**

On July 29, 2005, the United States Magistrate Judge recommended denying plaintiff's motions for declaratory judgment and for temporary restraining order, and that defendants' motion to dismiss be granted and plaintiff's claims be dismissed, pursuant to 28 U.S.C. § 1915(g). The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)C.

The court has conducted a de novo review of the record, including the exceptions, supplemental information, and amended complaint filed by plaintiff on August 4, September 19 and October 27, 2005. The issues raised in plaintiff's exceptions and supplemental filings, including his amended complaint, were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Plaintiff fails to sufficiently allege he is in imminent danger of serious physical injury, as required for him to proceed under the "imminent danger exception" to 28 U.S.C. § 1915(g), and therefore, such claims are dismissed, and plaintiff's motions for declaratory judgment and temporary restraining order are denied. Plaintiff's supplemental filings with the court indicate he continues to receive medical care, most recently on October 18, 2005, for his diagnosis of a small reducible hernia, and continues to receive his prescribed psyllium fiber for his condition. Although plaintiff continues to allege that the two 4-oz. Styrofoam cups

provided on a weekly basis by defendants are insufficient to take his prescribed psyllium fiber, Plaintiff has come forward with no information to support that assertion, and CMS personnel have concluded that the cups provided by the defendants are sufficient. *See* Doc. 30, Oct. 21, 2005, Letter from Associate Superintendent Arthur Wood to plaintiff Green, responding to plaintiff's complaint that he be permitted to purchase a cup from the prison canteen.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that plaintiff's motions for declaratory judgment and for temporary restraining order are denied [17, 18]. It is further

ORDERED defendants' motion to dismiss is granted and plaintiff's claims are dismissed, pursuant to the provisions of 28 U.S.C. § 1915(g) [22].

s/ Nanette K. Laughrey

NANETTE K. LAUGHREY  
United States District Judge

Dated: December 7, 2005  
Jefferson City, Missouri